

HOUSE BILL 544
By Bunch

AN ACT to amend Tennessee Code Annotated, Title 24, Chapter 5, relative to default judgments in subrogation actions.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 24, Chapter 5, Part 1, is amended by adding the following language as a new, appropriately designated section:

§24-5-115.

(a) In an action brought by an insurance company for recovery of amounts paid to or on behalf of its insured under the collision, comprehensive, medical payments or uninsured or underinsured motorist coverages of a contract of insurance, the affidavit of the plaintiff or its agent as to the total damages paid, or incurred, including the insured's deductible, is conclusive evidence against the party sought to be charged, except as provided under subsection (b); provided that such affidavit is accompanied by a certificate of a state commissioner, certificate of a notary public with seal annexed, or certificate of a judge of the court of general sessions, with the certificate of the county clerk that such judge is an acting judge within the county.

(b) The presumption afforded in subsection (a) shall not be conclusive to the extent that the party to be charged denies tort liability for the incident, or denies the extent of the damages alleged to be related to the incident, or both. Any such denial must be under oath in writing, or made orally in open court, and the defendant shall be allowed to assert any defense or objection the defendant may have. Upon such denial, on the plaintiff's motion, or in the interest of justice, the judge shall continue the action to a date certain for trial.

(c) This section does not apply if the automobile insurance carrier files an intervening complaint in an existing action brought by an injured person against the alleged tortfeasor.

(d) This section does not affect the viability of the made-whole doctrine in Tennessee.

SECTION 2. This act shall take effect July 1, 2005, the public welfare requiring it, and shall apply to all causes of action arising on or after such date.